

### Office Action Summary

**Application No.**

09/841,657

**Applicant(s)**

KITCHIN, DUNCAN M.

**Examiner**

Andrew Lee

**Art Unit**

2416

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-6, 8-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Henrion et al U.S. Patent Number 6,469,982.

Re Claim 1, fig.1 teaches a CTRL (a controller) coupled to a an interface to transmit data via L(ink) to a receiving device, wherein in a given event, an network operator distribute the unreserved bandwidth (a second portion) in proportion to the Minimum guaranteed bandwidth (a first portion) by adaptively assigning administrative weights (a rate change event) to the different data flows (See col. 3, lines 15 +).

Re Claim 4, refer to Claim 1, wherein the CTRL receives commands from Network Operator to adjust the administrative weights (detecting a bit rate change) to reserve additional bandwidth proportion for a given flow.

Re Claim 5, refer to Claim 4, wherein weight is administered to the unreserved bandwidth (the second portion) for additional bandwidth.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-3, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henrion et al U.S. Patent Number 6,469,982.

Re Claims 2, 3, Henrion et al fails to explicitly teach that the link a wireless medium supported by a wireless network card. Examiner takes notice that ATM switch can support wireless application. Hence, one skilled would have been motivated to modify the fig.1 with a wireless adaptor to support wireless application.

Re Claim 8, Henrion teaches that the first process of sharing guaranteed up to an amount of reserved bandwidth and the second process of sharing bandwidth over respective non-guaranteed bandwidth. Henrion fails to teaches prioritizing the bandwidth portions. However, reserved bandwidth must be guaranteed, one skilled in the art would have been motivated to priorities the reserved portion (first portion) over the non-guaranteed unreserved portion to safeguard minimum guaranteed reservation is not affected by the unreserved non-guaranteed resources.

6. Claims 6, 9, 10-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henrion et al U.S. Patent Number 6,469,982 in view of Park et al U.S. Patent Number 5,802,040.

Re Claim 6, 9, 10-14, 18-22, 24, 29, 30, Henrion et al fails to explicitly teach that "a new bandwidth reservation to compensate for the reduced transfer rate". However, Park et al teaches a congestion control means for receiving a congestion state (event causes a reduction in transfer rate) whereby a backward resource management cell is transmitted to reduce a transmission rate. Due to congestion, in Henrion, the weights can be modified to reduce the usage of the unreserved portion to mitigate for congestion. One skilled in the art would have been motivated to modify the bandwidth reservation to mitigate for the dropped QoS.

Re Claims 15, 23, 25-28 Henrion et al in view of Park et al fails to explicitly teach that the link a wireless medium supported by a wireless network card. Examiner takes notice that ATM switch can support wireless application. Hence, one skilled would have been motivated to modify the fig.1 with a wireless adaptor to support wireless application.

Re Claim 16, Henrion in view Park et al fails to explicitly teach "reduce rate based on a...channel condition.". Examiner takes notice that transfer rate can be modified based on channel condition. Hence, one skilled in the art would have been motivated to modify rate based on channel condition for reliability,

Re Claim 17, Henrion teaches that the first process of sharing guaranteed up to an amount of reserved bandwidth and the second process of sharing bandwidth over

respective non-guaranteed bandwidth. Henrion in view of Park et al fails to teaches prioritizing the bandwidth portions. However, reserved bandwidth must be guaranteed, one skilled in the art would have been motivated to priorities the reserved portion (first portion) over the non-guaranteed unreserved portion to safeguard minimum guaranteed reservation is not affected by the unreserved non-guaranteed resources.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 18-23 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Lee whose telephone number is 571-272-3130. The examiner can normally be reached on Monday to Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firman Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10. /Andrew Lee/
11. Primary Examiner, Art Unit 2416